IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO. NO. 188/2003

Judgment delivered on: November 21 ,2007

Smt. Bimla Devi ..... Appellant.
Through: Ms. Aruna Mehta, Advocate

versus

Shri Sanjeev Oberoi & Ors. ..... Respondents
Through: Mr.S.N.Parashar for respondent no.3

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

The present appeal is preferred against the award dated 15.11.2002 made by the Motor Accident Claims Tribunal.

Brief facts of the case are that on 24.2.87 at about 1.20 P.M. Smt. Saraswati Devi, Smt. Bimla Rani and Shri Amir Chand were sitting outside their house at 12/24 Moti Nagar, Delhi when a car bearing registration no DEA 6/05 came from Sudershan Park's direction and without caring for the red light traffic signal and without blowing any horn, the aforesaid car rashly and negligently driven by its driver, ran into the cot lying outside the aforesaid house with such a force that Shri Amir Chand and Smt. Saraswati Devi died whereas Smt. Bimla Rani received injuries. Three claim petitions were filed by the claimants and a common award was made in this regard on 15.11.2002. Aggrieved with the said award present appeal is preferred by the appellant. By way of this appeal, the appellant has assailed the finding of the Tribunal on the ground that the Tribunal has granted a meager amount of compensation for a sum of Rs.25,000/- on account of the disability suffered by the appellant to the extent of 25%. The appellant is also aggrieved

on account of the fact that no compensation has been awarded towards pain and sufferings and also towards the expenses incurred by the appellant for taking the services of a domestic servant. The appellant has also assailed the finding of the Tribunal on the grant of lower rate of interest of 6% per annum by the Tribunal.

Mr. Parashar, counsel for the respondent on the other hand contends that the award passed by the Tribunal is absolutely just and fair and there is no infirmity in the said award. Counsel for the respondent contends that disability has been considered as per the disability certificate produced by the appellant and the Tribunal has also placed reliance on the judgment of **Madhawan Vs. M.D. Marudhu Pandiyar transport Corporation, 2001 ACJ 873**. In the said judgment the compensation in the sum of Rs.25,000/- has been awarded in the case of permanent disability to the extent of 25%. Counsel for the respondent also contends that no

independent evidence was adduced by the appellant to show that any service of a domestic servant was taken by the appellant. Counsel also contends that the rate of interest as awarded by the Tribunal is reasonable.

I have heard counsel for the parties and have perused the record.

There is no dispute that the appellant has suffered permanent disability to the extent of 25%. At the time of the accident the appellant was 28 years old, but the Tribunal has not applied the structured formula of multiplier as laid down in the Second Schedule of the Motor Vehicles Act. The Supreme Court in **Smt. Supe Dei & Ors. Vs. National Insurance Co.Ltd & Anr. 2002 ACJ 1166** has held as under:

> "While considering the question of just compensation payable in a case all relevant factors including the appropriate multiplier are to be kept in mind. The position is well settled that the second schedule under Section 163A of the Act which gives the amount of compensation to be determined for the purpose of claim under the Section can be taken as a guideline while determining the compensation under Section 166 of the Act."

The Tribunal has granted a lump sum amount of Rs.25,000/- taking into consideration the permanent disability to the extent of 25%. The appropriate multiplier as laid down in the Second Schedule of the Motor Vehicles Act is 16 and taking the said multiplier as well as inflationary trends into consideration, the income which was being earned by the appellant has to be doubled. Under the Minimum Wages Act, in a period of 10 years, the income of skilled or semi-skilled worker gets doubled, and therefore, adopting the same yardstick, the income of the appellant can be assumed to get doubled during that period. After applying the multiplier of 16, the total loss of income as suffered by the appellant due to permanent disability to the extent of 25% would come to Rs.96,000/- . The Hon'ble Supreme Court in **Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179** has taken into consideration the future prospects while in the present case it is only the increase in the minimum wages under the Minimum

Wages Act which has been taken into consideration.

The Tribunal has also not awarded any amount towards pain and sufferings and has also deprived the appellant from any compensation towards loss of amenities. Counsel for the appellant has placed reliance on the judgment of the Supreme Court in **Amar Singh Vs. Ishwar & Ors. 1999 ACJ 809** and **Dr. (Mrs.)K.R. Tandon Vs. Om Prakash & Ors. 1999 ACJ 1299**. In **Amar Singh's case (Supra)**, the injured had suffered the permanent disability to the extent of 30% and the Supreme Court has enhanced the amount from Rs.50,000/- to Rs.1,00,000/-. However, the distinguished feature in the said case is that the injured had suffered prolonged period of hospitalisation and had undergone operations as well. Be that as it may, in the instant case the appellant is entitled to some reasonable and just amount towards loss of amenities as well as pain and sufferings. The possession of one's own body is the first and most valuable of

all human rights and while awarding compensation for bodily injuries this primary element is to be kept in mind. Bodily injury is to be treated as a deprivation, which entitles a claimant to damages. The amount of damages varies on account of gravity of bodily injury. Though it is impossible to equate money with human suffering, agony and personal deprivation, the Court and Tribunal should make an honest and serious attempt to award damages so far as the money can compensate the loss. Regard must be given to the gravity and degree of deprivation as well as the degree of awareness of the deprivation. Damages awarded in personal injury cases must be substantial and not token damages. The general principle which should govern the assessment of damages in personal injury cases is that the Court should award to injured person such a sum as will put him in the same position as he would have been in, if he had not sustained the injuries.

Considering the facts and circumstances of the present

case, a sum of Rs.50,000/- is awarded in favour of the appellant towards pain and sufferings and sum of Rs.25,000/- towards loss of amenities. The rate of interest as awarded by the Tribunal is also on the lower side. Accordingly the same is raised to 9% per annum.

In the light of above discussion, the matter is remitted back to the Tribunal to modify the award in terms of the above directions.

Parties are directed to appear before the Tribunal on 7.1.2008.

With these directions, appeal stands disposed of.

November 21, 2007 **KAILASH GAMBHIR J.**
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